

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

JAMES KEITH BURGARD, M.D.)
Certificate No. C-34368)

Respondent.)

No. D-5024

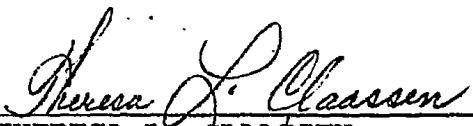
DECISION

The attached Stipulation, Waiver and Order Thereon is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on January 28, 1994.

IT IS OR ORDERED December 28, 1993.

By:


THERESA L. CLAASSEN
Secretary
Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ALFREDO TERRAZAS
Deputy Attorney General
3 455 Golden Gate Avenue, Room 6200
San Francisco, California 94102-3658
4 Telephone: (415) 703-1971

5 Attorneys for Complainant

6

7

BEFORE THE

8

MEDICAL BOARD OF CALIFORNIA

9

STATE OF CALIFORNIA

10

11 In the Matter of the Accusation)

12 Against:)

No. D-5024

13 JAMES KEITH BURGARD, M.D.)

714 Vista Del Mar)

14 Aptos, California 95003)

Physician's and Surgeon's)

15 Certificate No. C-34368)

STIPULATION,
WAIVER

AND ORDER THEREON

16

Respondent.)

17

18

19

20

IT IS HEREBY STIPULATED AND AGREED by and between the
parties to the above entitled matter as follows:

21

22

23

24

25

1. At the time of executing and filing the accusation
in the above matter, complainant, Kenneth J. Wagstaff, was the
Executive Director of the Medical Board of California, State of
California (hereinafter the "Board") and performed said acts
solely in his official capacity as such.

26

27

2. Dixon Arnett is now the Executive Director of the
Board and is represented herein by Daniel E. Lungren, Attorney

1 General of the State of California, by Alfredo Terrazas, Deputy
2 Attorney General.

3 3. James Keith Burgard, M.D. (hereinafter
4 "respondent"), has retained Marvin Firestone, M.D., Esq., as his
5 attorney and has also carefully read and scrutinized the
6 provisions contained in this stipulation and fully understands
7 the provisions contained in this stipulation and their effect.

8 4. Respondent has received and read the accusation
9 which is presently on file and pending in case number D-5024
10 before the Division of Medical Quality of the Medical Board of
11 California (hereinafter the "Division"). A true and accurate
12 copy of said accusation number D-5024 is attached hereto as
13 Exhibit A.

14 5. Respondent understands the nature of the charges
15 alleged in the above mentioned accusation and that said charges
16 and allegations would constitute cause for imposing discipline
17 upon the respondent's physician's and surgeon's certificate
18 heretofore issued by the board.

19 6. Respondent is aware of and has had explained to
20 him by his own counsel each of respondent's rights, including the
21 right to a hearing on the charges and allegations; respondent's
22 right to confront and cross-examine witnesses who would testify
23 against him; respondent's right to present evidence in his favor
24 or to call witnesses in his behalf, or to so testify himself;
25 respondent's right to contest the charges and allegations and any
26 other rights which may be accorded him pursuant to the California
27 Administrative Procedure Act (Gov. Code, §11500 et seq.); his

1 right to reconsideration, appeal to superior court and to any
2 other or further appeal. Respondent understands that in signing
3 this stipulation rather than contesting the accusations, he is
4 enabling the Division to impose disciplinary action upon his
5 license without further process.

6 7. All admissions of fact and conclusions of law
7 contained in this Stipulation are made exclusively for this
8 proceeding and any future proceedings between the Board and the
9 respondent and shall not be deemed to be admissions for any
10 purpose in any other administrative, civil or criminal action,
11 forum or proceeding.

12 8. That the respondent's license history and status as
13 set forth at paragraph 2 of the Accusation are true and correct
14 and that the respondent's address of record is as set forth in
15 the caption of this Stipulation and Waiver.

16 9. For purposes of the settlement of the action
17 pending against respondent in case No. D-5024 and to avoid a
18 lengthy administrative hearing that would impose severe physical
19 and economic hardship upon respondent, respondent admits that
20 there may be a basis for the imposition of discipline pursuant to
21 the allegations of the First, Second, and Third Causes for
22 Disciplinary Action regarding his convictions for having violated
23 California Vehicle Code section 23152 (Unlawfully driving a
24 vehicle while under the influence of alcohol) and patient S.Y.
25 Regarding the allegations of the Fourth, Fifth and Sixth Causes
26 for Disciplinary Action, respondent neither admits nor denies the
27 factual allegations contained therein relative to patients K.S.,

1 J.A., and M.H., respectively. The allegations contained in the
2 various Causes for Disciplinary Action of said Accusation
3 relating to the patients listed hereinabove are as more
4 specifically set forth as follows:

5 A) In diagnosing, caring for and treating patient
6 S.Y., identified in the Third Cause for Disciplinary Action,
7 respondent erroneously performed a bilateral tubal ligation on
8 the patient when she was only scheduled for a dilatation and
9 curettage;

10 B) In diagnosing, caring for and treating patient
11 K.S., identified in the Fourth Cause for Disciplinary Action,
12 respondent placed a suture through the patient's colon during
13 surgery which perforated the colon and necessitated subsequent
14 emergency exploratory surgery and a diverting colostomy and
15 Hartmann's pouch.

16 C) In diagnosing, caring for and treating patients
17 J. A. and M. H., identified in the Fourth and Fifth Causes for
18 Disciplinary Action, respectively, respondent failed to note that
19 the fetal monitor tracings were profoundly abnormal and indicated
20 severe progressive fetal distress. Further, respondent failed to
21 recognize that the implications of the monitor tracing patterns
22 required immediate intervention and that due to respondent's
23 failure to act in a timely fashion, both patients delivered
24 infants that, because of complications attributed to respondent's
25 failure to act in a timely fashion, died with 48 hours of
26 delivery.

27

1 D) Respondent's conduct as alleged above in
2 subparagraphs A, B and C hereinabove, may constitute gross
3 negligence and/or repeated negligent acts and/or incompetence
4 which may demonstrate general unprofessional conduct pursuant to
5 Business and Professions Code section 2234 subsections (b), (c)
6 and (d).

7 10. Respondent stipulates and agrees that he is fully
8 aware of the identity of each of the patients alleged in the
9 accusation.

10 11. Based upon all of the foregoing admissions,
11 stipulations, and recitals it is stipulated and agreed that the
12 Division may issue a decision upon this stipulation whereby:

13 Physician's and surgeon's certificate number C-
14 34368 heretofore issued to respondent James Keith
15 Burgard, M.D., is hereby revoked, provided, however,
16 that said revocation is stayed and respondent is placed
17 on probation for a period of five (5) years on the
18 following terms and conditions:

19 SPECIFIC TERMS OF PROBATION

20 (A) Actual Suspension

21 As part of probation, respondent is suspended from
22 the practice of medicine for 30 days beginning the effective date
23 of this decision.

24 (B) Drugs and Abstain from Use

25 Respondent shall abstain completely from the
26 personal use or possession of controlled substances as defined in
27 the California Uniform Controlled Substances Act, and dangerous

1 drugs as defined by Section 4211 of the Business and Professions
2 Code, or any drugs requiring a prescription.

3 (C) Drugs--Exception from Personal Illness

4 Orders forbidding respondent from personal use or
5 possession of controlled substances or dangerous drugs do no
6 apply to medications lawfully prescribed to respondent for a bona
7 fide illness or condition by another practitioner.

8 (D) Alcohol--Abstain from Use

9 Respondent shall abstain completely from the use
10 of alcoholic beverages.

11 (E) Biological Fluid Testing

12 Respondent shall immediately submit to biological
13 fluid testing, at respondent's cost, upon the request of the
14 Division or its designee.

15 (F) Diversion Program

16 Within 30 days of the effective date of this
17 decision, respondent shall voluntarily make himself available for
18 evaluation by the Division's Diversion Program. Since respondent
19 has been and continues to be in an alcohol recovery program
20 dating back to early 1990 under the care and treatment of David
21 L. Breithaupt, M.D., including participation at the O'Connor
22 Recovery Center, and since it appears that respondent has not
23 abused other drugs, has not relapsed, has endured great physical
24 and emotional stresses due to his deteriorating physical
25 condition and because he authorized Dr. Breithaupt to provide the
26 medical board with evaluations of respondent's progress every two
27 months for the first full year of his recovery program,

1 respondent hereby agrees that if after such evaluation by the
2 Division's Diversion Program it is considered that any
3 alternative and/or additional rehabilitation is necessary, such
4 recommendations shall be made to respondent's present recovery
5 program director, David L. Breithaupt, M.D., and shall be
6 incorporated as part of respondent's recovery and sobriety
7 program with Dr. Breithaupt.

8 Respondent agrees to abide by any and all of the
9 recommendations made by the Division's Diversion Program to Dr.
10 Breithaupt regarding respondent's care and treatment and further
11 agrees that the Division or its designee may contact Dr.
12 Breithaupt to monitor respondent's progress. Quitting Dr.
13 Breithaupt's recovery program without permission or being
14 expelled for cause shall constitute a violation of probation by
15 respondent.

16 **(G) Psychiatric Evaluation**

17 Within 30 days of the effective date of this
18 decision, and on a periodic basis thereafter as may be required
19 by the Division or its designee, respondent shall undergo a
20 psychiatric evaluation (and psychological testing, if deemed
21 necessary) by a Division-appointed psychiatrist who shall furnish
22 a psychiatric report to the Division or its designee.

23 If respondent is required by the Division or its
24 designee to undergo psychiatric treatment, respondent shall
25 within 30 days of the requirement notice submit to the Division
26 for its prior approval the name and qualifications of a
27 psychiatrist of respondent's choice. Upon approval of the

1 treating psychiatrist, respondent shall undergo and continue
2 psychiatric treatment until further notice from the Division.
3 Respondent shall have the treating psychiatrist submit quarterly
4 status reports to the Division.

5 (H) Psychotherapy

6 Within 60 days of the effective date of this
7 decision, respondent shall submit to the Division for its prior
8 approval the name and qualifications of a psychotherapist of
9 respondent's choice. Upon approval, respondent shall undergo and
10 continue treatment until the Division deems that no further
11 psychotherapy is necessary. Respondent shall have the treating
12 psychotherapist submit quarterly status reports to the Division.
13 The Division may require respondent to undergo psychiatric
14 evaluations by a Division appointed psychiatrist.

15 (I) Medical Evaluation

16 Within 30 days of the effective date of this
17 decision, and on a periodic basis thereafter as may be required
18 by the Division or its designee, respondent shall undergo a
19 medical evaluation by a Division-appointed physician who shall
20 furnish a medical report to the Division or its designee.

21 If respondent is required by the Division or its
22 designee to undergo medical treatment, respondent shall within 30
23 days of the requirement notice submit to the Division for its
24 prior approval the name and qualifications of a physician of
25 respondent's choice. Upon approval of the treating physician,
26 respondent shall undergo and continue medical treatment until
27 further notice from the Division. Respondent shall have the

1 treating physician submit quarterly status reports to the
2 Division.

3 (J) Prohibited Practice

4 During probation, respondent is prohibited from
5 practicing Obstetrics and/or Gynecology or any surgical
6 procedures.

7

8 STANDARD CONDITIONS OF PROBATION

9 (K) Obey All Laws

10 Respondent shall obey all federal, state and local
11 laws, and all rules governing the practice of medicine in
12 California.

13 (L) Quarterly Reports

14 Respondent shall submit quarterly declarations
15 under penalty of perjury on forms provided by the Division,
16 stating whether there has been compliance with all the conditions
17 of probation.

18 (M) Surveillance Program

19 Respondent shall comply with the Division's
20 probation surveillance program.

21 (N) Interview With Medical Consultant

22 Respondent shall appear in person for interviews
23 with the Division's medical consultant upon request at various
24 intervals and with reasonable notice.

25 //

26 //

27 //

1 (O) Tolling for Out-of-State Practice or Residence

2 The period of probation shall not run during the
3 time respondent is residing or practicing outside the
4 jurisdiction of California. If, during probation, respondent
5 moves out of the jurisdiction of California to reside or practice
6 elsewhere, respondent is required to immediately notify the
7 Division in writing of the date of departure, and the date of
8 return, if any.

9 (P) Completion of Probation

10 Upon successful completion of probation,
11 respondent's certificate will be fully restored.

12 (Q) Violation of Probation

13 If respondent violates probation in any respect,
14 the Division, after giving respondent notice and the opportunity
15 to be heard, may revoke probation and carry out the disciplinary
16 order that was stayed. If an accusation or petition to revoke
17 probation is filed against respondent during probation, the
18 Division shall have continuing jurisdiction until the matter is
19 final, and the period of probation shall be extended until the
20 matter is final.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

1 12. The within stipulation shall be subject to the
2 approval of the Division. If the Division fails to approve this
3 stipulation, it shall be of no force or effect for either party.

4 DANIEL E. LUNGREN,
5 Attorney General
6 ALFREDO TERRAZAS
7 Deputy Attorney General

8 DATED: Sept 22, 1993

9 Alfredo Terrazas
10 ALFREDO TERRAZAS
11 Deputy Attorney General

12 Attorneys for Complainant

13 I HEREBY CERTIFY that I have read this Stipulation for
14 Settlement in its entirety, that I fully understand the legal
15 significance and consequences thereof, that I fully understand
16 the terms of this Stipulation for Settlement, that it will result
17 in disciplinary action being imposed on my license to practice
18 medicine, that I voluntarily agree to the terms of this
19 Stipulation for Settlement, and IN AGREEMENT THEREOF, I affix my
20 signature this 18 day of October, 1993, at Dexter
21 Dexter, California.

22 James Keith Burgard, M.D.
23 JAMES KEITH BURGARD, M.D.
24 Respondent

25
26 Approved as to form.

27 Marvin Firestone
 MARVIN FIRESTONE, M.D., ESQ

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ALFREDO TERRAZAS
Deputy Attorney General
3 455 Golden Gate Avenue, Room 6200
San Francisco, California 94102-3658
4 Telephone: (415) 703-1971

5 Attorneys for Complainant

6
7 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
8 DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	No. D-5024
12 Against:)	
13 JAMES KEITH BURGARD, M.D.)	<u>ACCUSATION</u>
14 714 Vista Del Mar)	
Aptos, California 95003)	
15 License No. C-34368)	
)	
Respondent.)	

16
17 Kenneth J. Wagstaff, complainant herein, charges and
18 alleges as follows:

19 1. He is the Executive Director of the Medical Board
20 of California, Department of Consumer Affairs, State of
21 California (hereinafter the "Board") and makes these charges and
22 allegations solely in his official capacity.

23 2. At all times material herein, respondent James
24 Keith Burgard, M.D. (hereinafter "respondent") has held physician
25 and surgeon certificate number C-34368 which was issued to him by
26 the Board on or about July 12, 1972, and is in good standing at
27 the present time.

STATUTES

3. Section 2001 of the Business and Professions Code^{1/} provides for the existence of the Board.

4. Section 2003 of the code provides for the existence of the Division of Medical Quality (hereinafter referred to as the "division") within the Board.

5. Section 2004 of the code provides, inter alia, that the division is responsible for the administration and hearing of disciplinary actions involving enforcement of the Medical Practice Act (Section 2000, et seq.) and the carrying out of disciplinary action appropriate to findings made by a medical quality review committee, the division, or an administrative law judge with respect to the quality of medical practice carried out by physician and surgeon certificate holders.

6. Sections 2220, 2227 and 2234 of the code, together provide that the division shall take disciplinary action against the holder of a physician's and surgeon's certificate who is guilty of unprofessional conduct.

7. Section 2220 of the code provides that:

... except as otherwise provided by law, the Division of Medical Quality may take action against all persons guilty of violating this chapter. The division shall enforce and administer this article as to physician and surgeon certificate holders, and the division chapter for these purposes including, but not limited to:

(a) Investing complaints from the public, from other licensees,

1. All statutory references are to the Business and Professions Code unless otherwise indicated.

1 from health care facilities, or
2 from a division of the board that a
3 physician and surgeon may be guilty
4 of unprofessional conduct.

5 8. Section 2227 of the code provides that a licensee
6 whose matter has been heard by the Division of Medical Quality,
7 by a medical quality review committee or a panel of such
8 committee, or by an administrative law judge, or whose default
9 has been entered, and who is found guilty may, in accordance with
10 the provisions of this chapter:

11 (a) Have his or her certificate revoked upon order of
12 the division.

13 (b) Have his or her right to practice suspended for a
14 period not to exceed one year upon order of the division or a
15 committee or panel thereof.

16 (c) Be placed on probation upon order of the division
17 or a committee or panel thereof.

18 (d) Publicly reprimanded by the division or a
19 committee or panel thereof.

20 (e) Have such other action taken in relation to
21 discipline as the division, a committee or panel thereof, or an
22 administrative law judge may deem proper.

23 9. Section 2234 of the code provides, in relevant
24 part, that the Division of Medical Quality shall take action
25 against any licensee who is charged with unprofessional conduct.
26 In addition to other provisions of this article, unprofessional
27 conduct includes, but is not limited to, the following:

(b) Gross negligence.

1 (c) Repeated negligent acts.

2 (d) Incompetence.

3 10. Business and Professions Code section 2236(a)
4 provides that the conviction of any offense substantially related
5 to the qualifications, functions, or duties of a physician or
6 surgeon constitutes unprofessional conduct within the meaning of
7 this chapter.

8 FIRST CAUSE FOR DISCIPLINARY ACTION

9 11. On or about June 28, 1990, following a plea of
10 nolo contendere, respondent was convicted of a violation of
11 California Vehicle Code section 23152 (b), with a prior
12 conviction, (Unlawfully driving a vehicle while under the
13 influence of alcohol exceeding 0.08%, by weight), in the
14 Municipal Court of Santa Cruz County Judicial District, Case
15 Number 40-03122. As a result of said conviction, the imposition
16 of sentence was suspended and respondent was placed on probation
17 for a period of 60 months with conditions which included:

18 That he shall not drive a motor vehicle with any amount
19 of alcohol in his system;

20 That his driving privilege would be restricted for
21 twelve months in that he could only drive to, from and
22 during work and to and from treatment at a Multiple Offense
23 Drinking Driver Program;

24 That he perform 130 hours of volunteer service;

25 That he be confined to jail for 48 hours; and

26 That he pay a fine in the amount of \$1,340.

27 12. Respondent's conviction as alleged above in

1 paragraph 11 constitutes unprofessional conduct and is grounds
2 for disciplinary action pursuant to Business and Professions Code
3 sections 2234(a) and 2236(a) in that it constitutes the
4 conviction of a crime which is substantially related to the
5 qualifications, functions or duties of a physician and surgeon..

6 SECOND CAUSE FOR DISCIPLINARY ACTION

7 13. On or about January 24, 1985, respondent was
8 convicted, following a plea of guilty, of a violation of
9 California Vehicle Code section 23152 (a), (Unlawfully driving a
10 vehicle while under the influence of alcohol) in the Municipal
11 Court of Santa Cruz County Judicial District, Case Number 4-
12 10362. In said case the imposition of sentence was suspended and
13 respondent was placed on probation for 36 months with terms and
14 conditions including:

15 That he complete a First Offender Drinking Driver
16 Program;

17 That he be confined in County Jail for 48 hours;

18 That he could not drive with any measurable amount of
19 alcohol in his system;

20 That he submit to a complete chemical test if arrested
21 for driving under the influence; and

22 That he pay a fine in the amount of \$705.

23 14. Respondent's conduct as alleged above in paragraph
24 13 constitutes unprofessional conduct and is grounds for
25 disciplinary action pursuant to Business and Professions Code
26 sections 2234(a) and 2236(a) in that it constitutes the
27 conviction of a crime which is substantially related to the

1 qualifications, functions or duties of a physician or surgeon.

2 THIRD CAUSE FOR DISCIPLINARY ACTION

3 15. Patient S. Y.^{2/} was a 36 year old Gravida 2, Para
4 1, woman who presented to Dr. Wolfe of Kaiser Santa Clara on
5 March 14, 1985 with a history of secondary infertility. She had
6 previously undergone tubal surgery for infertility in 1981 and
7 had in 1982 delivered a full term infant. Dr. Wolfe referred the
8 patient to respondent for an infertility evaluation. On May 30,
9 1985 patient S.Y. had a positive pregnancy test. During her
10 office visit with Dr. Wolfe of July 17, 1985 the uterine size was
11 less than anticipated and no fetal heart tones were detected. An
12 ultrasound that same day showed an empty gestational sac
13 consistent with either a missed abortion or a less than 6 week
14 gestation. The patient had a follow-up ultrasound examination on
15 August 1, 1985 that confirmed a missed abortion. The patient
16 wished a uterine evacuation as soon as possible and Dr. Wolfe
17 discussed the case with respondent.

18 16. In caring for and treating said patient S. Y.,
19 respondent scheduled her for surgery, for a dilatation and
20 curettage, for August 6, 1985. Respondent, in performing the
21 surgery, erroneously performed a bilateral tubal ligation on said
22 patient. Prior to said patient leaving the operating room, the
23 error was discovered and respondent also performed the dilatation
24 and curettage.

25 //

26
27 2. Initials are used herein and full names will be
disclosed upon receipt of a request for discovery.

1 17. Respondent's conduct as alleged in paragraphs 15
2 and 16 of performing the wrong surgery on patient S.Y.
3 constitutes gross negligence and/or incompetence and is therefore
4 grounds for disciplinary action pursuant to Business and
5 Professions Code sections 2234(b) and (d).

6 FOURTH CAUSE FOR DISCIPLINARY ACTION

7 18. Patient K.S. is a 38 year old Gravida 3, Para 3,
8 woman who had undergone a total abdominal hysterectomy and right
9 salpingoophorectomy in 1982. On or about August 20, 1987,
10 respondent undertook to care for and treat patient K. S. for
11 incapacitating pelvic pain. On said date, respondent proceeded
12 to perform a mini laporotomy at which time he noted that there
13 were adhesions of bowel to the vaginal cuff and to the left
14 pelvic side wall as well as the ovary. Respondent then performed
15 a left salpingectomy and adhesiolysis and the patient did well
16 postoperatively and was discharged on August 24, 1987, pain free.

17 19. On or about March 28, 1989 patient K.S. called
18 regarding pelvic pain and refused to see any physician other than
19 respondent. Respondent saw patient K.S. on March 30, 1989 at
20 which time an ultrasound examination was ordered because of a
21 negative pelvic examination. The ultrasound revealed a cyst in
22 the region of the left ovary measuring 3.3 X 3 X 2.5 cm.

23 20. In caring for and treating said patient K. S., on
24 or about April 17, 1989, respondent performed an examination
25 under anesthesia and a laparotomy with left oophorectomy and
26 lysis of adhesions. On April 20, 1989 patient K.S. was
27 discharged from the hospital after an uncomplicated postoperative

1 course. On April 23, 1989, just 6 days following the surgery by
2 respondent, patient K.S. presented to the Emergency Room and was
3 diagnosed with a perforated sigmoid colon. The surgeon who
4 performed the exploratory surgery noted that there was an
5 "antimesenteric perforation of the sigmoid colon...adjacent to
6 the area of the ligatures of the previous left oophorectomy done
7 6 days ago. There also appeared to be a stitch of the same
8 suture at the level of the perforation,...There was liquid
9 green/yellow stool draining from the defect."

10 21. Respondent's conduct as alleged in paragraphs 18,
11 19 and 20 constitutes negligence and/or incompetence and is
12 therefore grounds for disciplinary action pursuant to Business
13 and Professions Code sections 2234 (c) and (d) in that in the
14 course of performing surgery on patient K.S. on April 17, 1989,
15 respondent placed a suture through the patient's colon which
16 perforated the colon and necessitated subsequent emergency
17 exploratory surgery and a diverting colostomy and Hartmann's
18 pouch.

19 FIFTH CAUSE FOR DISCIPLINARY ACTION

20 22. On or about May 30, 1988, respondent undertook to
21 care for and treat patient J. A., a 19-year-old, Gravida 1,
22 female, who was approximately 35 weeks pregnant who presented
23 with complaints of decreased fetal movements.

24 23. Respondent ordered a NonStress Test (NST) which
25 revealed a flat fetal heart rate baseline and no fetal movement
26 as well as a late deceleration at 19:17 hours. Respondent then
27 proceeded to order an Oxytocin Challenge Test (OCT) which was

1 initiated by Pitocin infusion at approximately 21:10 hours. The
2 baseline fetal heart rate (fhr) at this time was 140 beats per
3 minute (bpm) and there was marked reduction in both short and
4 long term beat to beat variability (btbv). Late decelerations
5 were seen at 20:28-30, 21:12 and 21:16-17 hours. Respondent
6 chose to discontinue the OCT at 22:15 hours. Respondent then
7 prepared a written management plan to admit patient J.A. to Labor
8 and Delivery, continue observation, repeat the OCT in the AM and
9 obtain an ultrasound at that time. The fhr strip then reveals
10 mild variable decelerations at 23:47, 23:53, 23:59, 00:02 and
11 00:44 hours. The baseline fhr dropped to 120 bpm at
12 approximately 00:20 hours. There are late decelerations on the
13 strip at 00:31 and 00:46 hours and the baseline fhr then dropped
14 to less than 120 bpm at 00:58. At 01:22 hours, there appears to
15 be an "agonal" fhr pattern consisting of a falling baseline fetal
16 heart rate with repetitive late decelerations at 01:48, 01:52 and
17 01:59 hours. The baseline fhr then fell to 90 bpm at 02:00 and
18 then 80 bpm prior to the patient being brought to the operating
19 room by respondent. The patient then underwent an emergency
20 cesarean section that produced a 6 pound male infant who could
21 not be resuscitated. The neonatal hematocrit was found to 4.6%
22 with the normal range being 50-70%.

23 24. In caring for and treating patient J. A. as set
24 forth in paragraphs 22 and 23, the fetal monitor tracings were
25 profoundly abnormal and indicated severe progressive fetal
26 distress. Respondent failed to recognize that the implications
27 of the monitor tracing patterns required immediate intervention.

1 Respondent ordered continued observation of the patient for
2 several hours after the abnormal monitor tracings appeared and
3 the patient later underwent an emergency Caesarean section that
4 produced a six-pound male infant who could not be resuscitated.

5 25. Respondent's conduct as alleged in paragraphs 22,
6 23 and 24 constitutes gross negligence and/or incompetence and is
7 therefore grounds for disciplinary action pursuant to Business
8 and Professions Code sections 2234(b), and (d).

9 SIXTH CAUSE FOR DISCIPLINARY ACTION

10 26. On or about June 11, 1989, respondent undertook to
11 care for and treat patient M. H., a 36 year old Gravida 4, Para
12 1, SAB 2, female who was admitted for symptoms consistent with a
13 small bowel obstruction. Patient M. H. was at the time
14 approximately 29 weeks pregnant and was known to have
15 hyperthyroidism (Grave's Disease) and was being treated with PTU
16 in consultation with perinatologists. NSTs performed on
17 admission and 24 hours later revealed a healthy and reactive
18 fetus. The patient was noted to have occasional uterine
19 contractions on June 15, 1989 and although there was no cervical
20 change her risk for preterm labor was felt to be significant
21 enough to warrant tocolysis. Despite the uterine contractions,
22 the patient continued to have a normal fetal heart rate tracing.
23 On June 17, 1989 the patient's condition was felt not to be
24 improving and she underwent an exploratory laparotomy and release
25 of a small bowel obstruction. Post-op, in the Intensive Care
26 Unit, she was noted to have a late deceleration at 16:44-45
27 hours. Also noted as of 20:20 hours was a decreased fhr btbv.

1 At 20:29 there was a late deceleration lasting 1 minute and a
2 moderate variable deceleration (to 90 bpm) was noted at 20:31
3 hours. At 21:43 there is a fetal bradycardia to 70 bpm and at
4 21:48 another bradycardia to 80 bpm. This was followed by
5 repetitive late decelerations with absent beat to beat
6 variability every 2 minutes. There is an "agonal" pattern that
7 lasts for several minutes recovering at 23:17 until 23:39 hours.
8 Again, there are repetitive late decelerations until 02:10 when
9 the fhr recovers without btbv and a fhr of 120 bpm. Late
10 decelerations continue to occur irregularly from then on and then
11 repetitively every three to four minutes from 05:30 until 06:25
12 hours. The fhr tracing is lost from 09:00 to 09:40 hours and is
13 followed by profound late decelerations with every uterine
14 contraction after 10:00 hours until delivery via cesarean
15 section. A 30 week male infant was delivered with APGARS of 0,
16 1, and 4 at 1, 5 and 10 minutes, respectively. The arterial
17 blood gas at delivery revealed a ph of 6.67, profound acidosis.
18 The neonate did poorly and died at less than 48 hours of age from
19 asphyxial complications.

20 27. In caring for and treating patient M. H. during
21 said time, post-operatively in the intensive care unit the fetal
22 monitor tracings were profoundly abnormal and indicated severe
23 and progressive fetal distress. Respondent failed to recognize
24 and act on the implications of the monitor tracing patterns in a
25 timely fashion and ignored multiple requests from the nursing
26 staff regarding the status of the fetus. A male infant was born
27 with profound acidosis and died at less than 48 hours of age from

1 asphyxial complications.

2 28. Respondent's conduct as alleged in paragraphs 26
3 and 27 constitutes gross negligence and/or incompetence and is
4 grounds for disciplinary action pursuant to Business and
5 Professions Code sections 2234(b), and (d).

6 SEVENTH CAUSE FOR DISCIPLINARY ACTION

7 29. The allegations of the sixth cause for
8 disciplinary action are hereby incorporated as if fully set forth
9 in these words.

10 30. In caring for and treating patient M. H. during
11 said time, said patient underwent exploratory laparotomy and
12 release of a small bowel obstruction on or about June 17, 1989.
13 Post-operatively, while patient M. H. was in the intensive care
14 unit, the respondent verbally ordered increases and decreases in
15 fluid infusions and tocolytics without attention to the clinical
16 status of the said patient by either lung exam or I and O's. The
17 patient was found to have pulmonary edema, secondary to fluid
18 overload which necessitated intubation and ventilation of the
19 patient for several days.

20 31. Respondent's conduct as alleged in paragraphs 29
21 and 30 constitutes negligence and/or incompetence and is grounds
22 for disciplinary action pursuant to Business and Professions Code
23 section 2234(c) and (d).

24 EIGHTH CAUSE FOR DISCIPLINARY ACTION

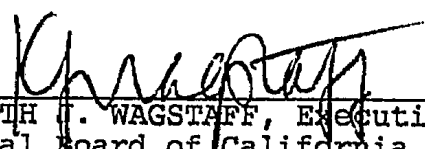
25 32. Complainant incorporates herein by reference as
26 though fully set forth above the allegations of unprofessional
27 conduct as alleged in the third cause for disciplinary action,

1 the fourth cause for disciplinary action, the fifth cause for
2 disciplinary action, the sixth cause for disciplinary action, and
3 the seventh cause for disciplinary action. In each of these
4 causes for disciplinary action, separately and severally,
5 respondent was negligent in the care and treatment of patients he
6 was treating as a medical doctor.

7 33. Respondent's conduct as set forth above in
8 paragraph 32 constitutes unprofessional conduct and repeated
9 negligent acts in violation of Business and Professions Code
10 section 2234(c) and is cause for disciplinary action.

11 WHEREFORE, complainant prays that the Board hold a
12 hearing on the matters alleged herein and following said hearing
13 issue a decision revoking physician and surgeon number C-34368
14 issued to James Keith Burgard, M.D. and taking such further
15 action as the Board deems just and proper.

16 DATED: November 6, 1992.

17
18 
19 KENNETH T. WAGSTAFF, Executive Director
20 Medical Board of California
Division of Medical Quality
State of California

21 Complainant

22
23 FILED
24 AMENDED TO STATE
25 AMENDED TO STATE
26 01 1992
27 12/11/92

03573160SF92AD0582
10/08/92